1944

Supreme Court of the United States.

No. 207.—October Term, 1903.

Samuel M. Damon, Plaintiff in Error, vs. The Territory of Hawaii. } In error to the Supreme Court of the Territory of Hawaii.

[April 25, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action at law, somewhat like a bill to quiet title, to establish the plaintiff's right to a several fishery of a peculiar sort, between the coral reef and the ahupuaa of Moanalua on the main land of the Island of Oahu. The organic act of the Territory of Hawaii repealed all laws of the Republic of Hawaii which conferred exclusive fishing rights, subject, however, to vested rights, and it required actions to be started within two years by those who claimed such rights. Act of April 30, 1900, ch. 339, §§ 95, 96; 31 Stat. 141, 160. At the trial the presiding judge directed a verdict for the defendant. Exceptions were taken but were overruled by the Supreme Court of the Territory, and the case comes here by writ of error.

The right claimed is a right within certain metes and bounds to set apart one species of fish to the owner's sole use, or, alternatively, to put a taboo on all fishing within the limits for certain months and to receive from all fishermen one-third of the fish taken upon the fishing grounds. A right of this sort is somewhat different from those familiar to the common law, but it seems to be well known to Hawaii, and, if it is established, there is no more theoretical difficulty in regarding it as property and a vested right than there is regarding any ordinary easement or *profit a prendre* as such. The plaintiff's claim is not to be approached as if it were something anomalous or monstrous, difficult to conceive and more difficult to admit. Moreover, however anomalous it is, if it is sanctioned by legislation, if the statutes have erected it into a property right, property it will be, and there is nothing for the courts to do except to recognize it as a right. *Wedding* v. *Meyler*, 192 U. S. 573, 583.

The property formerly belonged to Kamehameha IV, from whom it passed to his brother Lot Kamehameha and from him by mesne conveyances to the plaintiff. The title of the latter to the ahupuaa is not disputed. He claims the fishery also under a series of statutes and a royal grant. The history is as follows: In 1839 Kamehameha III took the fishing grounds from Hawaii to Kauai and redistributed them—those

named without the coral reef, and the ocean beyond, to the people—those "from the coral reef to the seabeach for the landlords and for the tenants of their several lands, but not for others." The landlord referred to seems to have been the konohiki or overlord of an ahupuaa or large tract like that owned by the plaintiff. It is not necessary to speculate as to what the effect of this act of the king would have been, standing alone, he then having absolute power. It had at least the effect of inaugurating a system, *de facto*. But in 1846, the monarchy then being constitutional, an act was passed, article 5 of which was entitled "Of the Public and Private Rights of Piscary." By the first section of this article it was provided again that the same fishing grounds outside the reef should be free to the people &c.; and then by the second it was enacted that the fishing grounds from the reefs to the beach, or, where there are no reefs, for one mile seaward, "shall in law be considered the private property of the landlords whose lands, by ancient regulation, belong to the same; in the possession of which private fisheries the said landholders shall not be molested except" &c.

By § 3 "the landholders shall be considered in law to hold said private fisheries for the equal use of themselves and of the tenants on their respective lands; and the tenants shall be at liberty to use the fisheries of their landlords, subject to the restrictions in this article imposed." Then follows a statement of the rights of the landlord as they have been summed up above and a provision that the landlords shall not have power to lay any tax or to impose any restrictions upon their tenants regarding the private fisheries other than those prescribed.

The Civil Code of 1859, § 387, repeated the enactment of § 2, that the fishing grounds within the reef or one mile seaward "shall, in law, be considered the private property of the konohiki," &c., in nearly the same words, and other sections codified the regulations just mentioned. There was a later repetition in the Penal Laws of 1897, § 1452, &c., and this was in force when the organic act of Congress was passed, repealing, as we have said, the laws conferring exclusive fishing rights, but preserving vested rights.

The foregoing laws not only use the words "private property," but show that they mean what they say by the restrictions cutting down what otherwise would be the incidents of private property. There is no color for a suggestion that they created only a revocable license, and if they imported a grant or a confirmation of an existing title, of course the repeal of the laws would not repeal the grant. The argument against their effect was not that in this case the ahuapuaa did not belong to the fishery, within the words "landlords whose lands, by ancient regulation, belong to the same," (the land seems formerly to have been incident to the fishery,) but that citizens have no vested rights against the repeal of general laws. This is one of those general truths which become untrue by being inaccurately

expressed. A general law may grant titles as well as a special law. It depends on the import and direction of the law. A strong example of the application of the rule intended by the argument is to be found in *Wisconsin & Michigan Railway* v. *Powers*, 191 U. S. 379, where a railroad company was held to have no vested right in exemptions proclaimed in a general tax act. The statute was construed not to import an offer, covenant or grant to railroads which might be built in reliance upon it. But if a general law does express such an offer, as it may, the grant is made. If the Hawaii statutes did not import a grant it is hard to see their meaning.

However, in this case it is not necessary to invoke the statutes further than to show that, by the law in force since 1846 at least, such rights as the plaintiff claims, and which, as is shown by the evidence, he and his predecessors in title have been exercising for forty years, have been recognized as private property. Such is the view of the leading case, decided in 1858 and acquiesced in, we believe, ever since. *Haalelea* v. *Montgomery*, 2 Hawaiian R. 62, 66. In the present instance the plaintiff claims under a royal patent, admitted to have been effective as to whatever, by its true construction, it purported to convey. This patent describes the ahupuaa by metes and bounds, and then the granting clause goes on: "There is also attached to this land a fishing right in the adjoining sea, which is bounded as follows"—again giving boundaries, and continuing: "The islands of Mokumoa, Mokuonini and Mokuoco are a part of Moanalua, and are included in the above area." The description of what is intended to be conveyed could not be plainer. But the habendum is "to have and to hold the above granted land," and it is said that as the fishery of an overlord or konohiki, unlike the rights of tenants, did not pass as an incident of land, but must be distinctly granted, the fishery was not included in the patent. *Haalelea* v. *Montgomery*, 2 Hawaiian R. 62, 71. Again, we must avoid being deceived by a form of words. We assume that a mere grant of the ahupuaa without mention of the fishery would not convey the fishery. But it does not follow that any particular words are necessary to convey it when the intent is clear. When the description of the land granted says that there is incident to it a definite right of fishery, it does not matter whether the statement is technically accurate or not; it is enough that the grant is its own dictionary and explains that it means by "land" in the habendum land and fishery as well. There is no possibility of mistaking the intent of the patent. It declares that intent plainly on its face. There is no technical rule which overrides the expressed intent, like that of the common law, which requires the mention of heirs in order to convey a fee. We are of opinion that the patent did what it was meant to do, and therefore that the plaintiff is entitled to prevail.

Judgment reversed.

END OF CASE